

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re ) Case No. 17-11028-B-11  
 )  
**PACE DIVERSIFIED CORPORATION,** )  
 )  
 )  
Debtor. )  
 )

PACE DIVERSIFIED CORPORATION, a ) Adv. Proceeding No. 18-01006-B  
California corporation; DARK )  
ROCK, LLC, a California limited ) DC No. BBR-6  
liability company, )

Plaintiffs.

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MACPHERSON OIL COMPANY, a  
California corporation; SANDRA  
BRAUCHT, an individual,

## Defendants

MACPHERSON OIL COMPANY, a  
California corporation.

Counter-Plaintiff.

V.

PACE DIVERSIFIED CORPORATION, A California corporation; DARK ROCK, LLC, a California limited liability company,

## Counter-Defendants

## MEMORANDUM DECISION

## PERTINENT FACTS

2        This case is about ownership of fee and mineral interests  
3        in a Kern County oil field. Over nine months after fact  
4        discovery closed in this case, Plaintiffs and counter-defendants  
5        Pace Diversified Corporation and Dark Rock LLC (collectively  
6        "PDC") learned Defendant and counter-claimant Macpherson Oil  
7        Corporation ("MOC") claimed one third ownership in the oil  
8        field. MOC claims the interest under a quit claim deed signed by  
9        Rebecca Cramer, an heir to the Braucht family. The Braucht  
10      family has historically owned the interests. The deed was  
11      signed just before PDC learned of MOC's claim. Earlier, MOC  
12      claimed the same or similar interests through other transfers.  
13      PDC claims rights in the same interest under a preceding "Pace-  
14      Olcese" lease.

15 PDC also learned that a "Landman" employed by MOC's agent,  
16 Maverick Petroleum, Yvonne Hicks, allegedly told Cramer and  
17 perhaps other Braucht heirs the land and mineral interests were  
18 "unleased." Curiously, the same day of the Cramer to MOC deed,  
19 Cramer signed a "ratification" of the lease interest to PDC.

20 PDC and MOC agreed to voluntarily exchange documents  
21 concerning the Cramer deed and lease ratification. The court  
22 vacated a pre-trial conference and modified the discovery cut  
23 off to accommodate PDC and MOC's stipulation allowing limited  
24 discovery. After the informal document exchange, PDC wanted to  
25 further depose Hicks—who was deposed about one year ago—and to  
26 depose Cramer—who has not been deposed. MOC opposes the  
27 depositions. So, the matter is before the court under the  
28 parties' stipulation providing for mutual submissions of briefs

1 and other documents. The court determined a hearing was  
2 unnecessary and is deciding the matter based on the written  
3 submissions.

4

5 CONTENTIONS

6 PDC contends there is cause to permit both depositions  
7 because after the Cramer deed, MOC changed its legal position  
8 from having acquired the Braucht interests by lease to acquiring  
9 the interests by deed and other transfers. So, PDC contends the  
10 depositions are necessary. They also contend that Hicks  
11 represented to the Braucht heirs, including Cramer, the Braucht  
12 interests were not subject to a lease though Hicks knows this  
13 litigation has been pending and was aware of PDC's claims. PDC  
14 points to the fact that Hicks' deposition was taken over one  
15 year ago; long before the 2019 transfers discovered only three  
16 months ago. Cramer has not previously been deposed in this  
17 adversary proceeding and PDC contends should answer questions  
18 about the transactions.

19 MOC claims any information about Hicks or Cramer is not  
20 probative on the extent of any interests because Cramer's  
21 predecessors held title in joint tenancy. When one of the joint  
22 tenants died, the surviving tenant received title free of Pace's  
23 claimed interest since the surviving tenant did not sign the  
24 "Pace-Olcese" lease. MOC also points out that the  
25 "ratification" Pace received was not recorded before MOC  
26 recorded the Cramer quit claim deed. PDC had contacts with  
27 Cramer at the same time MOC did, MOC claims, so no new  
28 information can be gleaned from the depositions. MOC contends

1 that Hicks' representations that the Braucht interests were free  
2 of the claimed Pace lease is consistent with MOC's theory why  
3 its' claim to title has precedence over PDC.

4

5 ANALYSIS

6 The court's discretion in dealing with discovery matters is  
7 beyond dispute. See Fed R. Civ. P. 26 (b)(2) Fed. R. Bankr. P.  
8 7026). Leave of court is necessary to depose a person twice.  
9 Fed. R. Civ. P. 26 (a) (2). The court finds cause to permit the  
10 second deposition of Ms. Hicks and to permit the "post-discovery  
11 cutoff" deposition of Ms. Cramer.

12 MOC's concern that the information to be obtained is not  
13 probative because of its legal theory that Cramer's  
14 predecessor's death terminated the "Pace-Olcese lease" is not  
15 persuasive on this motion. That argument is equivalent to the  
16 contention that the admissibility of the evidence revealed in  
17 discovery is the standard for allowing discovery. That, of  
18 course, is not the case. See Fed. R. Civ. P. 26 (b)(1).

19 PDC's contacts with Cramer during the last year does not  
20 obviate the need for discovery. First, a deposition is not  
21 limited to witnesses who a party may not have contacted about  
22 the transaction underlying the litigation. Second, again the  
23 standard for allowing discovery does not include the lack of or  
24 amount of previous contact.

25 MOC has not persuaded the court that either the second  
26 deposition of Hicks or the Cramer deposition will result in any  
27 harm or burden on MOC. MOC has not demonstrated that either  
28 deposition is cumulative or that there is a less expensive way

1 for PDC to get the information. See Fed. R. Civ. P. 26 (b) (2)  
2 (C). See, Christy v. Pennsylvania Turnpike Commission, 160  
3 F.R.D. 51, 53 (E.D. Penn. 1995). The late exchange of the  
4 documents further justifies the discovery. See, Botell v. U.S.,  
5 2:11-cv-1545 GEB GGH, 2013 U.S. Dist. LEXIS 12075 (Jan. 29,  
6 2013, E.D. Cal.) citing Christy.

7 Finally, the question of "good cause" to permit discovery  
8 after the cut off is within the trial court's discretion and  
9 reviewing courts are highly deferential to the trial court's  
10 decision. See, Rivera-Almodovar v. Instituto Socioeconomico  
11 Communitario, 730 F. 3d 23, 26 (1<sup>st</sup> Cir. 2013). The parties'  
12 stipulation for document production, the produced documents, the  
13 fact that Cramer was not deposed before and the limits placed on  
14 this discovery by the court supports granting the request.

15 The second deposition of Hicks will be limited to the 2019  
16 transaction the parties exchanged documents about. No further  
17 deposition of Ms. Hicks will be permitted on any topic addressed  
18 in the first deposition. The second Hicks deposition will be  
19 limited to two hours of direct examination by PDC's counsel.  
20 There is no time limit on MOC's cross examination, if any.

21 The deposition of Ms. Cramer will be permitted but only  
22 about the 2019 transactions that are the subject of the informal  
23 document exchange. The court will also authorize the deposition  
24 by remote means under Fed. R. Civ. P. 30 (b)(4). The precise  
25 method of taking and recording the deposition shall be left to  
26 the parties. If the parties cannot agree on a method to  
27 conduct, record or transcribe the Cramer deposition, either  
28 party may bring the matter before the court.

1 PDC's counsel shall prepare an order consistent with this  
2 ruling. Order to be approved as to form by MOC's counsel.  
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6 **Dated:** Oct 24, 2019

By the Court

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8 **René Lastreto II**, Judge  
9 United States Bankruptcy Court

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Instructions to Clerk of Court  
Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked  X, via the U.S. mail.

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